15 U.S. 542
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TRANSCRIPT OF RECORD. CASE NO. 15015.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 729.

THE UNITED STATES, APPELLANT,

vs.

CHARLES T. HUTCHINS.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 13, 1892.

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10515

1 IN THE COURT OF CLAIMS.

CHARLES T. HUTCHINS
vs.
THE UNITED STATES. } No. 16832.

I. *Petition filed October* 20, 1890.

To the honorable, the Chief Justice and Associate Justices of the Court of Claims:

The petition of Charles T. Hutchins respectfully show to your honors:

That he is an officer in the Navy of the United States, to wit: Lieutenant-commander, and that he was serving as such on the 22d day of May, 1890.

That upon that date he was ordered by proper authority to proceed from the navy-yard at Mare Island, California, to the city of New York, in charge of certain men and apprentices who were transferred from the U. S. S. Marion to New York, in accordance with the order of the Bureau of Navigation, on the 12th day of May, 1890.

That he was so proceeding in obedience to said orders, and in so doing travelled the distance of for which he was allowed by the accounting officer of the Treasury Department, on July 24th, 1890, only his actual expenses; in all, the sum of $97.

Claimant says that he is entitled to mil'age at the rate of eight cents per mile for the distance actually travelled by him under orders, and prays judgment in the sum of

The claimant further says that he is the sole owner of this claim, and that he has not borne arms of allegiance against the Government of the United States.

CHARLES T. HUTCHINS,
By JOHN PAUL JONES,
Attorney.

John Paul Jones being first duly sworn, upon his oath, says that he is the attorney for Charles T. Hutchins, and that the allegations above are true to the best of his knowledge and belief.

JOS. W. AMAN,
Commissioner Court Claims.

2 II.—*Traverse filed October* 29, 1890.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

3 III. *Findings of fact and conclusion of law, filed January 25, 1892.*

The court, upon the evidence, finds the following to be the facts:

I.

The claimant is an officer in the Navy, to wit, a lieutenant-commander. He was serving as such on the 22d day of May, 1890, when he was ordered to proceed by steamer from San Francisco to New York, via the Isthmus of Panama, in charge of a detachment of men.

II.

He did so proceed from San Francisco to New York, a distance of 6,186 statute miles, and paid his own transportation and expenses, which were afterwards refunded to him, in the sum of $97, but he was not allowed or paid anything on account of mileage.

III.

The distance from San Francisco to New York by the shortest usually traveled route is 3,266 miles.

CONCLUSION OF LAW.

And upon the foregoing findings of fact the court decides, as conclusion of law:

The claimant should recover mileage at the rate of 8 cents a mile, deducting therefrom the sum of $97 refunded to him as expenses.

4 IV. *Opinion of the court.*

NOTT J., delivered the opinion of the court:

Under the different provisions of law which are declared by the acts 3d March, 1835 (4 Stat. L, p. 755, sec. 2), 16th June, 1874 (18 id., p. 72), 30 June, 1876 (19 id., p. 65), 5th August, 1882 (22 id., p. 284, 286), officers in the Navy are entitled to mileage "for traveling expenses when under orders" (act 1835), except in the following instances:

"Officers of the Navy traveling abroad under orders hereafter issued shall travel by the most direct route, the occasion and necessity for such order to be certified by the officers issuing the same; and shall receive, in lieu of the mileage now allowed by law, only their actual and reasonable expenses." (Act of 5th August, 1882, 22 Stat. L., p. 286.)

Chronologically stated, the Navy appropriation act, 1835, gives mileage; the Army appropriation act, 1874, takes it away; the Navy appropriation act, 1876, restores it; and the Navy appropriation act, 1882, withholds it from travel abroad.

The question presented by this case is whether travel from one city in the United States to another city in the United States, from San Francisco to New York, is travel abroad.

On the 22d May, 1890, the claimant, a lieutenant-commander in the Navy, was ordered to proceed by steamer from San Francisco to New York in charge of a detachment of men. He obeyed the order and claimed mileage. The accounting officers allowed him his actual expenses, $97, but refused mileage.

If the officer's discretion had not been interfered with by his superior officer, if he had been left free to travel by any route he deemed best, he would have been bound to take the shortest route of ordinary travel; and whether he did so or not, his mileage would have been computed by that route. Du Bose's case (19 C. Cls. R., 514) Hannum's (ibid.), (516). In other words, he would have been bound to have traveled from San Francisco to New York by rail; and if the lines of railway travel varied in length, he would have been entitled to mileage only for the shortest.

The legislation on this subject must not be regarded as arbitrary, but as founded on some just and rational principle. Travel abroad ordinarily involves long ocean voyages, where mileage ceases to be reimbursement and becomes emolument. Travel at home is usually for shorter distances and involves innumerable petty disbursements, running down to ten cents for a street car or thirty-five cents for a dinner, as may be seen in the annual reports of the Attorney-General. The purpose of the statutes undoubtedly is that the reimbursement for traveling expenses abroad shall be the actual outlay of the officer, and for traveling expenses at home shall be commuted in the form of mileage. And the principle which governs the computation of mileage is that where the officer is left free to exercise his discretion he must select an ordinary route, but where a route is prescribed for him by superior authority he is entitled to mileage for the distance actually traveled. It, therefore, at first seems that the officer in this case must be entitled either to mileage by the way of the Isthmus—that is, for the route he was ordered to take—or merely to the reimbursement of his actual expenses. But there are some other elements which should enter into the consideration of the case.

Travel abroad, in the ordinary acceptation of that very common term, means travel in foreign parts. Travel at home means travel where the point of departure and the point of destination are both in one's own country. An officer ordered from Norfolk to New York would not be travelling abroad because the steamer went upon the high seas. An officer ordered from Niagara Falls to Detroit would not be traveling abroad because he took the shortest railroad route and his journey lay wholly through Canada. An officer ordered from Charleston to Savannah would not be traveling abroad because he took the steamer instead of the train.

But the travel in the present case was complex in character. It was travel at home in its design, i. e., in its object being to pass from one point to another point in one's own country; it was travel abroad in its nature, i. e., in its being by a vastly circuitous route on the high seas and and through a foreign country. If the officer had selected this route voluntarily he certainly would not be permitted to reap any advantage from so doing. But here all discretion had been taken from him by his superior officer and duty was assigned to him which left no alternative.

It therefore seems clear, on the one hand, that the officer should not be deprived of his statutory right to mileage for traveling from one point in

his own country to another, and on the other hand that his mileage should not extend to a kind of travel which in its nature was travel abroad. If the actual expenses had been greater than mileage by the ordinary railroad route, the officer would have had a right to present his account for actual expenses, and the order to proceed by sea and the Isthmus would have been sufficient authority for his reimbursement. Conversely, when the mileage by the ordinary traveled route was greater than the actual expenses of the other, the officer had the right to present his account for mileage, and the order to proceed from San Francisco to New York was sufficient authority for its payment.

It is the opinion of the court that the claimant is entitled to recover mileage for 3,266 miles, at 8 cents per mile, amounting to $261.28, less $97, which has been paid to him; and it is the judgment of the court that he recover $164.28.

6 V. *Judgment of the court.*

CHARLES T. HUTCHINS
vs.
THE UNITED STATES. } 16832.

At a Court of Claims held in the city of Washington, on the 25th day of January A. D. 1892, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Charles T. Hutchins, claimant, do have and recover of and from the United States the sum of one hundred and sixty-two dollars and twenty-eight cents ($162.$\frac{28}{100}$).

By THE COURT.

7 VI. *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 25th day of January, 1892, in favor of the claimant, the defendants, by their Attorney-General, on the 22d day of March, 1892, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court March 22, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

8 IN THE COURT OF CLAIMS.

CHARLES T. HUTCHINS
vs.
THE UNITED STATES. } No. 16832.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of

law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 7th day of April, 1892.

[SEAL] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 15015. Court of Claims. Term No. 729. The United States, appellants, vs. Charles T. Hutchins. Filed April 13, 1892.

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CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
vs.
CHARLES T. HUTCHINS. } No. 729.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

CHARLES C. BINNEY,
Assistant Attorney,
J. E. DODGE,
Assistant Attorney-General,
for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
vs.
CHARLES T. HUTCHINS. } No. 729.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

I. STATEMENT OF THE CASE.

The appellee, an officer in the United States Navy, was ordered, May 22, 1890, to proceed from San Francisco to New York, via the Isthmus of Panama, in charge of a detachment of men, and he made the journey accordingly, at a total cost of $97, which was afterwards refunded to him by the United States, but nothing was allowed or paid him on account of mileage. (Record, pp. 1, 2.)

He then filed a petition in the Court of Claims for mileage at 8 cents per mile for the whole distance traveled

by him under orders in making the above journey, less the $97 refunded him as above stated. The Court of Claims held that he was not entitled to this mileage for the distance from San Francisco to New York via the Isthmus of Panama (6,186 miles), but that he was entitled to mileage for the distance between those cities by the shortest usually traveled route (3,266 miles), and on January 25, 1892, entered judgment in his favor for $164.28, being the amount of this mileage, $261.28, less the $97 already mentioned. From this judgment the United States appealed, the appeal being allowed March 22, 1892. (Record, pp. 1, 2, 4.)

II. ASSIGNMENTS OF ERROR.

The Court of Claims erred—

1. In holding that the act of August 5, 1882 (22 Stats., 286), providing that "officers of the Navy traveling abroad under orders * * * shall receive, in lieu of the mileage now allowed by law, only their actual and reasonable expenses," did not apply to such an officer when traveling under orders from San Francisco to New York via the Isthmus of Panama.

2. In holding that the appellee was entitled to mileage at 8 cents a mile for the entire distance from San Francisco to New York by the shortest route of ordinary travel, as if his journey had been performed in the United States, when in point of fact it was made on the high seas and through a foreign country.

3. In entering judgment in favor of the appellee for the sum of $164.28.

III. BRIEF OF ARGUMENT.

The Navy appropriation act of August 5, 1882 (22 Stats., 286), changed the law theretofore in force, by which naval officers were entitled to mileage at 8 cents a mile when traveling on public business, and provided that—

> Officers of the Navy traveling abroad under orders hereafter issued shall travel by the most direct route, the occasion and necessity for such order to be certified by the officer issuing the same, and shall receive in lieu of the mileage now allowed by law only their actual and reasonable expenses.

The same act, and every subsequent navy appropriation act, provides for the traveling expenses of naval officers under orders in the following words:

> For mileage to officers while traveling under orders in the United States, and for actual personal expenses of officers while traveling abroad under orders.

In the present case actual personal expenses have been paid to the claimant, and the claim now made is for the difference between these expenses and mileage by the shortest usually travelled route. This claim is without legal foundation, unless it be held that a journey from San Francisco to New York via the Isthmus of Panama is travel "in the United States." It is submitted that this should not be held.

If that portion of the act of 1882 which provides that mileage shall not be allowed to officers "traveling abroad" stood alone, the contention that those words did not include a journey from one part of the United States to another through a foreign country would be at least plausible, but this contention is answered by the appropriation clause

above quoted (since followed in other acts), which uses the word "abroad" as the opposite of "in the United States."

The expressions "in the United States" and "abroad" are, as the Court of Claims admits, not technical, and their ordinary acceptation excludes the idea that any journey which takes a man out of the United States is travel "in the United States." Not only does the simple expression "in the United States" itself admit of no qualification, but the plainest and most obvious meaning of the word "abroad," when used of countries, viz., "in another country," is equally definite in its comprehensiveness. Placed in this juxtaposition, these two mutually exclusive terms necessarily induce the conclusion that under this statute no traveling done in any other country than the United States is traveling "in the United States." It is too familiar an axiom to require authority to be cited in its support, that if there be nothing to indicate the intention of Congress to use these words in any other than their natural sense, that sense must prevail.

Here all evidence of the intention of Congress favors the use of these words in their ordinary sense. The object of the statutes regulating allowances for officers traveling expenses was, of course, reimbursement merely, not extra compensation. Before 1882 Congress had for many years sought to attain this object by allowing mileage to naval officers in all cases of travel under orders, except for a short period, when it was not allowed in any case. The only conceivable reason for allowing mileage is to keep the Treasury Department from being encumbered with accounts involving a multitude of petty items. The change

made in 1882 must have been based upon a belief that a real difference existed between the geographic conditions of the United States, the conditions of travel therein, and the needs of the service there, on the one hand, and such conditions and needs outside of the United States on the other, so that the retention of the mileage system was advisable for travel in the United States exclusively. It is impossible that such a distinction should be warranted in every case, but it is approximately fair, and at all events there is evidence of a definite intention to separate travel of one class, where mileage would be approximate reimbursement and the actual expense account would involve trival details, from another class where, general speaking, these circumstances would not exist. The existence of such an intention necessarily forbids the regarding as travel in the United States any travel which is, as the Court of Claims has admitted of that done in the present case, "abroad in its nature."

In construing this statute according to the natural meaning of its terms, the case of a journey on the high seas presents no difficulty. Strictly speaking, the high seas are neither "in the United States" nor "abroad," *i. e.*, "in another country." They constitute a neutral zone, which the traveler traverses, but in which he can not remain. If he both embark from and land in a port of the United States, and traverse only such portion of the high seas as lies opposite the shores of the United States; the journey can properly be spoken of as "in the United States;" while, if embarking in one country he land in another, or if he traverse seas remote from the United States, he is traveling "abroad."

The reasons given by the Court of Claims for disregarding the plain and natural meaning of the words of the statute may be briefly stated as follows:

(1) Had the appellee been left free to travel by any route he deemed best, he would unquestionably have been entitled to mileage by the shortest route of ordinary travel.

(2) Where the original point of departure and the ultimate destination are in the United States, the traveling is to be regarded as done in the United States.

(3) While this journey was "travel abroad in its nature," it was "travel at home in its design, *i. e.*, in its object being to pass from one point to another point in one's own country," and the object is the criterion.

(4) The right to mileage being statutory, a naval officer can not be deprived of it by being sent from one point in the United States to another by way of a foreign country.

As to the first proposition, had the appellee been simply ordered to proceed from San Francisco to New York he would have had to travel "in the United States" exclusively, because the use of his time being controlled by the Government, he would not, as a matter of fact, have been allowed time enough to go through a foreign country, and he would justly be entitled to mileage. If the relative geographical positions of San Francisco and New York were, however, such that the shortest route of ordinary travel lay through a foreign country, he would not have been entitled to mileage unless the second proposition of the Court of Claims can be upheld.

As to this second proposition, it is submitted (in addition to what has been said above as to the irrelevancy of

the object of the journey) that the Court of Claims looked too exclusively at the facts of the present case and too little at the comprehensiveness of the doctrine laid down. It is true that in the present case the appellee traversed only about 60 miles of foreign soil, and the Court of Claims seems to have applied the rule of *de minimis* when comparing the short journey across the isthmus with the whole trip of 6,186 miles or even with the usually traveled route of 3,266 miles.

If, however, the appellee had been sent from the extreme northwestern part of the State of Washington, or from one of a number of other points on our northern frontier, to St. Albans or Newport in Vermont, or to Bangor, Me., the shortest usually traveled route would have taken him by the Canadian Pacific Railway for almost the whole distance, and the proportion of travel in the United States to that in a foreign country would have been extremely small, although the point of departure and point of destination would have been in the United States, just as they were in the present case. The court will presumably pause before it decides to pronounce a journey of some thousands of miles through Canada to be travel "in the United States," yet it must so pronounce if the second proposition of the Court of Claims be correct.

It is possible that all that the Court of Claims really meant was that a journey from one point in the United States to another through a very small portion of foreign territory is to be regarded as travel in the United States. The rule of *de minimis* must, however, always be applied with extreme caution. In the present case where, besides traversing a foreign country, the appellee traveled for

thousands of miles on the high seas, where the nearest shores were foreign; and where the journey was not continuous, but involved going by steamship to a foreign port, by railroad through a foreign country, and then by steamship again from a foreign port, the whole trip may fairly be regarded as having too little of the character of domestic travel to be so considered by the simple process of disregarding the isthmus.

Even had the appellee not passed through a foreign country at all, had he been required to proceed by the route around Cape Horn, yet the nature of such a journey being so different from what is generally understood by travel "in the United States," this Court would presumably hesitate in that case also to apply the rule of the Court of Claims, apart from the fact that the expenses would probably exceed mileage by the direct route. The proper rule for the interpretation of the act of 1882 must be one that requires no strained construction in any case, and this rule, it is submitted, is not that announced by the Court of Claims.

The third proposition, that the object of the travel should govern, is answered by the fact that Congress, in the act of 1882, was regulating, presumably in the direction of economy for the United States, the allowance to be made to naval officers traveling under orders. In so doing it distinguished, as already stated, between two species of travel believed to differ in character and expense. The character and expense of a journey depend upon the mode of travel and the regions traversed, but not upon either the termini or the object for which the journey is undertaken. The "nature" of the journey, though dis-

regarded by the Court of Claims, is therefore a proper criterion in this case, while the "object" is not so.

It may even be questioned whether in this case the only object of the journey was "to pass from one point to another in one's own country." The object was to take charge of a detachment of men whom the Government sent through a foreign country. This object could not be attained merely by the appellee's passing from one point to another, but only by his taking that particular route at that particular time. Travel through a foreign country was necessary to the attainment of this object, and therefore, even if the object were a criterion, it would not warrant the conclusion of the Court of Claims.

The fourth proposition is simply the second in another form. The statutory right to mileage only exists as regards travel "in the United States." Unless those words receive the broad interpretation given them by the Court of Claims an officer has no such statutory right when traveling outside of the United States, at least for any appreciable distance.

The Court of Claims is, moreover, not wholly consistent in applying this proposition. It says that had the isthmus route cost more than mileage by the direct route the appellee would have had a right to present his account for actual expenses, and the order to proceed by sea and the isthmus would have been sufficient authority for his reimbursement. This is indisputable, but taking it in connection with what the Court of Claims considers the converse (but what may perhaps properly be called the reverse) that, the mileage being greater than the actual expenses, "the order to proceed from San Francisco to New York was

sufficient authority for its payment," the doctrine to be gathered from both is that if the actual expenses of a journey between points in the United States, but through a foreign country, be less than mileage, it is a case of travel "in the United States," while if they be more than mileage, it is travel "abroad." It is submitted that this is scarcely such a criterion of domestic as compared with foreign travel as could have been contemplated by the framers of the statute.

The fact that the act of 1882 required officers traveling abroad to take the most direct route, whereas the claimant was ordered to take an indirect route, can not possibly affect the matter. The route itself was the most direct water route, and as far as the appellee is concerned his orders not only authorized but required him to take it. This provision of the statute was intended to prevent officers from making their travel needlessly costly to the United States, not to prevent the United States from availing itself of economical modes of travel for its officers.

Should any doubt remain in the mind of the court as to the propriety of holding that the journey in the present case was abroad, and to be paid for as such, the equity of the appellant's position should turn the scale. It can not be supposed that this statute was enacted in order to do more than merely reimburse officers for the expense necessarily involved in travel on a scale of comfort suitable to their position. The mileage system was evidently adopted in order to prevent the Treasury from being needlessly encumbered with accounts involving a multitude of petty items, but it was not intended as a means of enabling officers to receive more for their journeys than they actually cost.

Owing to the geographical position of the United States a naval officer going abroad must, in the great majority of cases, take a long journey by steamship. On those vessels the quarters, meals, and transportation of the traveler are paid for in one lump sum; so that there is no need of a mileage allowance in order to simplify accounts. The journey taken in the present case was of that character. The amount of cost is not disputed, and if the trip be held to be "abroad," the appellee will have received precisely what the law contemplated that officers should receive in all cases; whereas, if mileage should be allowed, he will recover a bonus of $164.28, or almost 170 per cent, a result that is clearly not within the intention of the statute.

It may very well be that the pay of naval officers is too low; that the labors of men so indispensable to the protection of our commerce and our shores, and to the maintenance of the national reputation abroad, is inadequately compensated; but public policy forbids any construction of a statute to be favored which encourages public officers to look out for chance perquisites as a means of increasing inadequate salaries.

The appellant, therefore, submits that the judgment of the Court of Claims should be reversed.

CHARLES C. BINNEY,
Assistant Attorney,
J. E. DODGE,
Assistant Attorney-General,
for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, Appellant,
vs.
CHARLES T. HUTCHINS, Appellee. } No. 729.

BRIEF FOR APPELLEE.

This case is submitted for the appellee upon the opinion of the Court of Claims.

JOHN PAUL JONES,
Attorney for Appellee.